



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

**[Docket Number USCG-2017-0651]**

**RIN 1625-AA00**

### **Safety Zone; Navy Underwater Detonation (UNDET) Exercise, Apra Outer Harbor, GU**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish two recurring safety zones for navigable waters of Apra Outer Harbor and Piti, Guam. The safety zones will encompass sites designated for U.S. Navy underwater detonation (UNDET) exercises. The Coast Guard believes this safety zone regulation is necessary to protect the public and exercise participants within the affected area from possible safety hazards associated with these exercises. These safety zones will impact a small designated area of navigable waters in Apra Harbor and Piti during periods of times, many of which are of short duration, on days requested by the Navy for UNDET exercises. With the exception of exercise participants, entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port Guam. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE**

**FEDERAL REGISTER]**. Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-0651 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Petty Officer Robin Branch, Sector Guam, U.S. Coast Guard; telephone (671) 355-4835, email [wwmgum@uscg.mil](mailto:wwmgum@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

U.S. Navy UNDET exercises occur multiple times throughout the year to train and prepare personnel for operational missions. We have established safety zones for these Navy UNDETs in past years through a temporary final rulemaking for each exercise. For all subsequent exercises, we propose to establish recurring safety zones through this regulation to safeguard the public and exercise participants within the affected area from possible safety hazards associated with the exercises.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231. The purpose of these

proposed safety zones is to protect the public and exercise participants from possible safety hazards associated with the exercises.

### **III. Discussion of Proposed Rule**

The COTP proposes to establish these recurring safety zones for periods of time, many of which are of short duration, on days requested by the Navy for UNDET exercises. The safety zones will cover all navigable waters within a 700 yard radius above and below the surface for the Apra Outer Harbor site and a 700 yard radius above and below the surface for the Piti site. The duration of the safety zones are intended to protect personnel, vessels, and the marine environment in these navigable waters during the UNDET exercise. With the exception of exercise participants, no vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analysis**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

#### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been

designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zones. Vessel traffic will be able to safely transit around these safety zones, which will impact a small designated area of waters off of Piti, Guam, and in Apra Outer Harbor for periods of time, many of which are of short duration, on days requested by the Navy for UNDET exercises. The UNDET exercises occur approximately 10 times a year, although additional exercises may be required based on Navy training needs. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zones and the rule allows vessels to seek permission to enter the zone.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would

not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves two safety zones for periods of time, many of which are of short duration, on days requested by the Navy for UNDET exercises that would prohibit entry within a 700 yard radius above and below the surface for the Apra Outer Harbor site and a 700 yard radius above and below the surface for the Piti site. Normally such actions are categorically excluded from further review under

paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have

provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

*Authority:* 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1402 to read as follows:

#### **§ 165.1402 Safety Zone; Navy Underwater Detonation (UNDET) Exercise, Apra Outer Harbor, GU.**

(a) *Location.* The following areas, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70-15), from the surface of the water to the ocean floor, are safety zones:

- (1) *Apra Outer Harbor, Guam.* All waters above and below the surface bounded



by a circle with a 700 yard radius centered at 13 degrees 27 minutes 42 seconds North Latitude and 144 degrees 38 minutes 30 seconds East Longitude, (NAD 1983).

(2) *Piti, Guam*. All waters above and below the surface bounded by a circle with a 700-yard radius centered at 13 degrees 29 minutes 03 seconds North Latitude and 144 degrees 40 minutes 03 seconds East Longitude, (NAD 1983).

(b) *Enforcement periods*. This section will be enforced for designated periods of time, many of which are of short duration, on days requested by the Navy for purpose of UNDET exercises.

(c) *Regulations*. The general regulations governing safety zones contained in 33 CFR 165.23 apply. With the exception of exercise participants, no vessels may enter or transit safety zones (a)(1) and no persons in the water may enter or transit safety zone (a)(2) unless authorized by the COTP or a designated representative thereof.

(d) *Enforcement*. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce these safety zones.

Dated: December 11, 2017.

**CHRISTOPHER M. CHASE,**

*Captain, U.S. Coast Guard,*

*Captain of the Port, Guam.*

**BILLING CODE 9110-04-P**

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